

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2447

IN THE MATTERS OF:

Served August 9, 1983

Application of RICHARD W. BUTLER)
for a Certificate of Public)
Convenience and Necessity to)
Engage in Special Operations)

Case No. AP-83-08

Application of V.I.P. TOURS for a)
Certificate of Public Convenience)
and Necessity to Conduct Special)
Operations -- Sightseeing Tours)
and School Children)

Case No. AP-83-10

Application of NATION'S CAPITAL)
SIGHTSEEING TOURS for a Certificate)
of Public Convenience and Necessity)
to Conduct Special Operations --)
Sightseeing Tours)

Case No. AP-83-12

Application of HENRY LICHTENSTEIN)
for a Certificate of Public)
Convenience and Necessity to)
Conduct Special Operations --)
Sightseeing Tours)

Case No. AP-83-13

Application of ARTHUR J. THOMAS)
T/A GOLDEN EAGLE SIGHTSEEING)
TOURS for a Certificate of Public)
Convenience and Necessity to)
Conduct Special Operations --)
Sightseeing Tours)

Case No. AP-83-17

Application of SAMUEL HOWELL T/A)
HOWELL SIGHTSEEING TOURS for a)
Certificate of Public Convenience)
and Necessity to Conduct Special)
Operations -- Sightseeing Tours)

Case No. AP-83-22

Application of JAMES WARREN DICKENS)	Case No. AP-83-23
for a Certificate of Public)	
Convenience and Necessity to)	
Conduct Special Operations --)	
Sightseeing Tours)	
Application of LUCILLE R. MOORE)	Case No. AP-83-26
T/A MOORE'S SIGHTSEEING SERVICE)	
for a Certificate of Public)	
Convenience and Necessity to)	
Conduct Special Operations --)	
Sightseeing)	
Application of SCENIC SIGHTSEEING)	Case No. AP-83-28
TOURS, a Partnership, for a)	
Certificate of Public Convenience)	
and Necessity to Conduct Special)	
Operations -- Sightseeing)	

INTRODUCTION

Each applicant seeks authority to conduct individually ticketed sightseeing operations, and each operates generally around the Mall area of Washington, D. C. Although there are some variations among the applications, they are so substantially alike that we believe that they should be consolidated for decision on a single record. Accordingly, the evidence regarding each applicant's fitness will first be summarized, and the public testimony will then be recounted. No party appeared in opposition to any of the applications.

THE APPLICANTS

By application filed April 11, 1983, Richard W. Butler seeks a certificate of public convenience and necessity to engage in special operations, limited to ". . . sightseeing tours of historic buildings and other points of interest in Washington, D. C." 1/

1/ At the hearing, a desire was expressed to serve Arlington National Cemetery, but because that point was excluded from the application and the public notice, it cannot be considered in this case.

Mr. Butler has been a sightseeing guide for approximately eight years, operating from his home in Stevensville, Md. He has operated an eight-passenger van and plans to acquire a 15-passenger van in October 1983.

Mr. Butler proposes to provide a four-hour tour of sightseeing points in the District of Columbia at a charge of \$15 per person (half fare for children 11 years of age and under accompanied by an adult). All-day tours are available for \$22.50 per person with the same half fare provision for children. Highlights of the half-day tour include the White House, F.B.I. Building, Ford's Theatre, Smithsonian Institution, U. S. Capitol and the Bureau of Engraving and Printing. Applicant feels that his service is somewhat unique because tours are varied to fit the desires and time schedules of his customers.

Mr. Butler has a regular maintenance schedule for his vehicle with service performed by professional mechanics. The vehicle is inspected twice a year by the District of Columbia. In 1981, Mr. Butler earned \$12,058 from his sightseeing business with expenses of \$9,912. For the future year, he predicts revenue of \$14,000 and expenses of \$7,994, exclusive of Mr. Butler's earnings.

In Case No. AP-83-10, by application filed April 21, 1983, V.I.P. Tours (V.I.P.) seeks a certificate of public convenience and necessity to engage in special operations limited to (1) "... transportation of private school students (e.g., Georgetown Day School)" and (2) sightseeing tours operating between points of interest within the Metropolitan District, together with mail, express and baggage in the same vehicle with passengers.

Applicant, a general partnership of three individuals, operates three 15-passenger vans and proposes to provide a four-hour tour of sightseeing points in the District of Columbia at a charge of \$12.50 per person (half fare for children age 5-11, with no charge for children under 5). A longer 'combination tour' including a stop at Arlington Cemetery, Arlington, Va., would cost \$18.75 (\$9.40 for children ages 5-11, with no charge for children under 5). Discounts for large groups, senior citizens and handicapped persons would be available. The proposed school transportation would involve an informal agreement between applicant and the student's parents based on a \$70 per child charge for each month of transportation.

The individual partners have operated as sightseeing guides for approximately 10 years and have transported children to and from Georgetown Day School for the last seven years. V.I.P.'s vehicles are inspected semiannually by the District of Columbia. Maintenance is performed as needed by professional mechanics. By operating three vehicles, V.I.P. feels that the partners can substitute for one another in the event of equipment failure.

In Case No. AP-83-12, by application filed April 21, 1983, Nation's Capital Sightseeing Tours (Capital), a general partnership composed of two individuals, seeks a certificate of public convenience and necessity to perform special operations providing sightseeing tours between points of interest within the Metropolitan District, together with mail, express and baggage in the same vehicle with passengers.

Capital operates one 11-passenger van and one 15-passenger van and proposes to provide a six-hour tour of sites in the District of Columbia for a charge of \$12.50 per person (half fare for children ages 5-11, children under five at no charge), and an expanded seven-hour tour including a stop at Arlington Cemetery, Arlington, Va., at a cost of \$17.50 per person, (half fare for children ages 5-11, with no charge for children under 5).

Both partners are experienced tour guides with appropriate licenses from the District of Columbia. Nation's Capital feels that its personal, unstructured tours are preferred by many customers. Vehicles are regularly maintained, and Nation's Capital has arranged with other tour operators for backup service in the event of an emergency.

Capital's operating statement for calendar year 1982 shows income of \$38,110 and equal operating expenses including drivers' wages (partners' profit) of \$21,299. Applicant projects approximately the same revenues and revenue deductions for 1983.

In Case No. AP-83-13, by application filed April 26, 1983, Henry Lichtenstein, a sole proprietor, seeks a certificate of public convenience and necessity to engage in special operations limited to sightseeing tours, between points of interest in the Metropolitan District in 15-passenger vans.

Applicant now operates an 11-passenger van and proposes to provide a building tour, a city tour and a combination tour. The adult price for the building tour (which includes visits to any four of the following sites: White House, U. S. Capitol, Air and Space Museum, National Archives, Museum of History and Technology, Washington Monument and Jefferson Memorial) is \$12.50 a person. For the city tour, which includes Alexandria, Va., the Lincoln Memorial and either Mt. Vernon or Arlington National Cemetery, the adult fare is \$15. A combination of the two tours is priced at \$27.50 per adult. Children of five through 11 years of age would be charged one-half of the corresponding adult fare, and children under five years of age would be transported free.

Mr. Lichtenstein has had both a hacker's license and a guide license from the District of Columbia since 1967. Much of his business is generated by referrals from satisfied customers and other transportation companies. The number of customers can vary from zero to five a day during the slow season, or 10 to 12 a day during peak tourism months. Most customers join the tour near the Washington Monument.

Some maintenance service is performed by a professional mechanic, but most routine maintenance on the van is done by the applicant. In the event of a vehicle breakdown (which has happened once), Mr. Lichtenstein would arrange for another licensed carrier to complete the tour for him. Applicant's vehicle is inspected semiannually by the District of Columbia.

Mr. Lichtenstein's balance sheet, dated December 31, 1982, shows assets of \$18,305 and no liabilities. In 1982, he earned \$13,747 from sightseeing operations and incurred operating expenses (exclusive of his salary or profit) of \$5,353. Mr. Lichtenstein anticipates some increase in business for 1983.

In Case No. AP-83-17, by application filed May 3, 1983, Arthur J. Thomas trading as Golden Eagle Sightseeing Tours seeks a certificate of public convenience and necessity to engage in special operations limited to "sightseeing tours operating between points of interest within the Metropolitan District . . ." together with mail, express and baggage in the same vehicle with passengers. The application is restricted to the use of equipment designed to seat 15 passengers or less (including the driver).

Applicant, a sole proprietor, operates a 1983 15-passenger van and proposes to provide a four-hour building tour at a charge of \$12.50 per adult, \$6.25 for children ages 5-11 and free to children under 5. A combination tour, including building tour plus a riding tour of Arlington Cemetery and several additional memorials, would last approximately six and one-half hours and would cost \$18.75 per adult, \$9.40 for children 5-11 and no charge for children under five. Discounts would be available for groups, senior citizens and military and handicapped persons.

Mr. Thomas has been a sightseeing guide for 15 or 16 years. He estimates that, during the tourist season, he provides tours for 40 or 45 persons a week. His vehicle is regularly maintained, and Mr. Thomas has arrangements with other operators to continue a tour for him should his vehicle break down.

Applicant's balance sheet, dated March 31, 1983, shows total assets of \$13,443 and equipment notes payable of \$11,150. His operating statement for the twelve-month period ended March 31, 1983, reflects sightseeing revenues of \$13,440, operating expenses of \$10,580 and interest expense of \$758. Mr. Thomas expects to have gross revenue of approximately \$15,000 over the next year.

Mr. Thomas filed a similar application in 1976. That application was denied and Mr. Thomas was ordered to cease and desist from transporting passengers without a certificate of public convenience and necessity. Nevertheless, applicant has operated continually since that order was entered until being advised by the staff and the U. S. Park Police in April 1983 that he would be arrested if unauthorized operations persisted. Shortly thereafter, this application was filed.

Mr. Thomas acknowledges the cease-and-desist order, but avers that personnel of the District of Columbia Public Service Commission (PSC) told him that he could operate under the authority of that agency. Mr. Thomas was given a written letter from PSC to that effect. That advice (although legally incorrect), coupled with his observations of other uncertificated tour operators, led him to believe that continued operations were permissible. It appears that neither Mr. Thomas nor the PSC official to whom he spoke understand the difference between a license to conduct tours and a certificate to transport passengers. That distinction has now been made clear to Mr. Thomas, and he has discontinued operations pending the outcome of this proceeding. Mr. Thomas has familiarized himself with the Commission's rules and regulations, and states that he will abide by them in the future.

In Case No. AP-83-22, filed May 4, 1983, Samuel Howell, trading as Samuel Howell Sightseeing Tours, seeks a certificate of public convenience and necessity to engage in special operations limited to "sightseeing tours operating between points of interest within the Metropolitan District." The application limits service to use of a 15-passenger van and states that applicant would transport mail, express and baggage in the same vehicle with passengers.

Applicant, a sole proprietor, proposes to provide a four-hour building tour of specified sites at a charge of \$12.50, \$6.25 for children age 5-11, and no charge for children under 5. A combination tour, including a building tour plus Arlington Cemetery and several additional memorials, would last approximately six and one-half hours and would cost \$18.75 per person, \$9.40 for children age 5-11 and no charge for children under five. Discounts would be available for groups, senior citizens and military and handicapped persons.

Mr. Howell holds a hacker's license and a sightseeing guide badge from the District of Columbia. He will use a 1979 15-passenger van to perform the proposed tours. Applicant normally operates 12 months a year on a full-time basis, carrying approximately 130-140 sightseers a week. During 1982, however, illness curtailed his operations for several months. In addition to the Mall area, Mr. Howell originates tours at other points in northwest Washington, D. C., such as the Bible Way Church, Veterans Administration Hospital, Normandy Inn and the Gramercy and Ramada Inns.

Mr. Howell's vehicle is checked and maintained on a regular basis. In the event of a breakdown, he has arrangements with V.I.P. Tours to conduct operations on his behalf. A certificate evidencing appropriate insurance for the protection of the public was filed on Mr. Howell's behalf. After being advised that authority from this Commission was required to conduct the proposed operations, Mr. Howell ceased operating his tours and filed appropriate applications.

Applicant's undated balance sheet shows cash of \$1,000 and no liabilities. His income statement for 1982 reflects sightseeing income of \$8,250 and expenses of \$6,801 for an operating ratio of 82.43 percent. He projects revenues of \$11,138 for a future 12-month period will result in earned income (after expenses) of \$3,333.

In Case No. AP-83-23, filed May 5, 1983, James Warren Dickens seeks a certificate of public convenience and necessity to provide sightseeing tours of Washington, D. C., and Arlington and Mount Vernon, Va. Service would be provided in an eight-passenger van and would originate in the area of the Washington Monument, Washington, D. C.

Applicant, a sole proprietor, proposes to offer a regular building tour priced at \$12, a substitute building tour priced at \$8, a tour of Arlington for \$12 and a Mount Vernon tour priced at \$17. Children ages six to 12 would be charged half price, and children under six would ride free.

Mr. Dickens has conducted tours beginning in the area of the Washington Monument for over 30 years. He operates a 1982 van which is still under service warranty and is inspected semiannually by the District of Columbia. Mr. Dickens has both a hacker's license and a guide badge from D. C.

Applicant's undated balance sheet lists current assets of \$5,712, total assets of \$47,136 and liabilities of \$5,878. His 1982 Form 1040 Schedule C shows sightseeing income of \$9,125, and expenses of \$6,528.

By application filed May 6, 1983, in Case No. AP-83-26, Lucille R. Moore seeks a certificate of public convenience and necessity to transport passengers, in special operations limited to sightseeing tours, between "points of interest in the Metropolitan District," restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15-passengers or less (including the driver).

Applicant is a sole proprietor and proposes to provide three tours. Tour A (Ford's Theatre, the White House, Bureau of Engraving and Printing, the U. S. Capitol and Smithsonian Institution) lasts approximately six hours. Tour B is a nonstop motor tour of the same points, and Tour C includes the stops on Tour A plus stops at the Jefferson, Lincoln and Viet Nam Memorials and Arlington National Cemetery. The price structure for these tours is set forth below.

	<u>ADULT FARE</u>	<u>CHILD FARE AGES 5-11</u>	<u>CHILDREN UNDER 5</u>
TOUR A	\$12.50	\$ 6.25	FREE
TOUR B	7.50	3.75	FREE
TOUR C	20.00	10.00	FREE

Discounts are offered for groups and senior citizens.

Mrs. Moore is employed by the Federal government and operates this business on a part-time basis with the assistance of her husband, Oscar. Both Moores are licensed hackers and class A guides and have been in the sightseeing business for approximately 20 years. When they learned that WMATC authorization was required for such service, they discontinued operations and filed appropriate applications.

Generally, the Moores conduct tours on Thursday, Friday, Saturday and Sunday. Approximately 80 percent of their business is from passersby in the Mall area and 20 percent is referrals from former customers. During the peak tourist season, Mrs. Moore estimates that she serves from 150 to 200 people a month.

Applicant now operates a 1975 15-passenger van which is regularly maintained by professional mechanics. Inasmuch as that van has been operated for approximately 70,000 miles, Mrs. Moore hopes to replace it later this year with a vehicle of more recent vintage.

Mrs. Moore's balance sheet, dated March 31, 1983, shows assets of \$2,850 and no liabilities. Her operating statement for calendar year 1982 shows income of \$1,050 and expenses of \$4,633. Mrs. Moore testified that earnings were reduced in 1982 due to the illness of her husband. She anticipates revenues of approximately \$7,000 in 1983.

Scenic Sightseeing Tours, a partnership between Major Lester Gorham and Jarvis Earl Gorham, in Case No. AP-83-28, filed May 6, 1983, sought authority identical to that proposed by Mrs. Moore plus authority to transport private school students in special operations, between points in the District of Columbia and Montgomery County, Md., on the one hand, and, on the other, Georgetown Day School located in Washington, D. C. The private school portion of the application was subsequently dismissed at Scenic's request.

Tour A includes stops at any four of the following six points: the White House, U. S. Capitol, Bureau of Engraving and Printing, Smithsonian Institution, Ford's Theatre and the Peterson House, and the FBI Building. Tour B includes the Lincoln, Jefferson and Viet Nam Memorials, the Washington Monument and Arlington National Cemetery. Tour C includes a nonstop motor tour of Georgetown and stops in Alexandria and Mt. Vernon, Va. Tour D is a combination of Tours A and B. Sightseeing prices would be as follows:

	ADULT FARE	CHILD FARE AGES 5-11	CHILDREN UNDER 5
TOUR A	\$12.50	\$ 6.25	FREE
TOUR B	11.00	5.50	FREE
TOUR C	20.00	10.00	FREE
TOUR D	23.00	11.50	FREE

Major Gorham has been in the sightseeing business since 1961 and is a former principal in Washington Area Mini-Bus Tours, Inc. (WAMBT), which holds Certificate No. 28 from this Commission. Both partners hold hacker's licenses and guide licenses from the District of Columbia.

In 1981, Major Gorham sold his interest in WAMBT. He states that he was unaware that sightseeing operations conducted solely in the Mall area (as opposed to pickups at hotels and other facilities) require a certificate. Subsequently, he formed the applicant partnership with his son. Applicant intends to abide by all pertinent WMATC regulations.

Applicant operates two 15-passenger vans of 1975 and 1977 vintages. In the peak season, approximately 50 passengers a day are transported. In the off season, 10 passengers a day is "doing good." The vans are regularly maintained, and Scenic has arrangements with other tour operators to help in the event a van should become disabled while in public service. An appropriate certificate of insurance has been filed.

Scenic's balance sheet dated March 31, 1983, shows assets of \$5,070, and no liabilities. For the 12 months ending March 31, 1983,

applicant's sightseeing revenues were \$46,546 and expenses (exclusive of the partner's wages or profits) were \$14,878. For 1983, Scenic anticipates approximately the same level of revenues and an increase in expenses of approximately \$3,200 attributable primarily to increased costs of gas and oil, administration and professional fees.

PUBLIC WITNESSES

In Case No. AP-83-08, three witnesses testified regarding a need for individually-ticketed sightseeing tour service. The first witness, a retired F.B.I. agent now working as a private consultant, stated that when employed at the F.B.I. headquarters building on Pennsylvania Avenue, N. W., Washington, D. C., he recommended applicant's service to about 20 tourists per month who were looking for local sightseeing tours. Returning tourists were laudatory of the service, according to the witness. The witness has used Mr. Butler's service and found it satisfactory and opined generally that there was a need for this type of service.

An officer of a local parking garage stated that tourists parking at the facility at 10th and E Streets, N. W., Washington, D. C., often inquire as to the availability of sightseeing tours. He has referred approximately 20 parties a month to Mr. Butler and has received favorable comments from returning tourists. The owner of a restaurant near 10th and E Streets, N. W., Washington, D. C., testified that she has known applicant for a number of years and has observed his handling of tour groups. She stated that he does an excellent job and that she refers customers inquiring about sightseeing service to applicant on the average of 35-40 times a month. The comments she has received have been favorable.

In Case No. AP-83-10, two witnesses testified as to the need for transportation for children attending Georgetown Day School, Washington, D. C., from Washington, D. C. and Montgomery County, Md., and one witness testified regarding a general need for service. The two school witnesses generally stated that applicant's past service has been satisfactory. They contract directly with applicant for the service and assert that transportation would be extremely difficult without the service inasmuch as public transportation does not adequately serve the origin and destination points.

The third witness, employed by a public relations firm in Washington, D. C., testified that the firm has called upon V.I.P.'s partners over the years for transportation and has been satisfied with the results. The sightseeing service has generally been charged on an hourly basis.

In Case No. AP-83-12, a social worker employed at the Hebrew Home of Greater Washington, Rockville, Md., has used the service of one of applicant's partners and found the performance satisfactory. The witness also has used applicant's services for personal sightseeing work with pick-up at Silver Spring, Md. In addition, the witness stated she has referred others to applicant for sightseeing service because she believes that the service is good and the rates are reasonable.

In Case No. AP-83-13, a minister testified that he knew applicant for many years and was familiar with the sightseeing services provided by applicant. This work is generally developed by referrals from individuals and hotel employees, according to the witness, who added that an asset of applicant is his fluency in several languages thus enhancing service provided for foreign tourists.

In Case No. AP-83-17 three witnesses testified at the public hearing. The first witness, a long-time acquaintance of applicant, has used applicant's services on numerous occasions and referred many individuals and groups to him. In all cases, the sightseeing tours were satisfactory. In some instances applicant picked up groups at various private residences in Montgomery County, Md., and at Howard University, Washington, D. C., and the witness expressed a desire for door-to-door service, although a pick-up on the Mall would also be feasible. The witness also stated that there was a general need for this type of service available to the public.

The second witness, who also has known applicant for many years, testified that he has used applicant's services in the past and has referred friends to applicant. In each case service has been found to be satisfactory. The ability of a sightseer to take a personalized tour in a small group is an advantage over Tourmobile service or a large motor coach, according to the witness, because the guide in a small group can answer specific questions and can tailor the tour to the specific desires of the group.

The last witness, the owner of a restaurant near 10th and E Streets, N. W., Washington, D. C., stated that applicant has brought tour passengers to his restaurant for breakfast or lunch on occasion. He also mentioned that other Mall tour operators follow the same practice. The witness opined that the tour service benefitted the tourists based on their reactions to his questions.

In Case No. AP-83-22, three witnesses testified at the public hearing. The first witness, director of the Veterans Administration

dental center, stated that persons from points throughout the United States travel to the center for continuing education courses. As pertinent here, many of the participants use applicant's services for sightseeing trips to points of interest in the Washington, D. C., area, estimated by the witness to total perhaps 100 individuals per year. Based on the positive reaction of the sightseeing, the witness recommends the tour to all program participants. The next witness, an Elder of the Bible Way Church, Washington, D. C., assists in transportation matters relating to the church. Applicant provides sightseeing service for many people from out-of-town locales who desire such tours after church services, numbering as many as 100 people on a weekend. The witness has taken applicant's tour and found it satisfactory and stated that others he has spoken to have enjoyed the tours. As a member of the church, applicant would be readily available to provide service as needed.

The last witness, general manager of the Normandy Inn, Washington, D. C., testified that applicant has provided service for the Inn satisfactorily in the past, offering guests sightseeing tours tailored to specific demands. The service is beneficial to the hotel because of the personalized touch applicant uses instead of the more impersonalized service offered by some of the larger tour companies, according to the witness, who also asserted that poor or less-than-satisfactory tour service adversely reflects on the Inn's reputation.

In Case No. AP-83-23, the first witness stated that she has used applicant's sightseeing service where applicant served as a tour guide (but did not drive). She felt the tour was very good, with applicant pointing out and describing major tourist attractions in the District of Columbia as well as Mount Vernon. She also stated that she refers friends and relatives to applicant's sightseeing service (where applicant serves as driver and guide) through her church. The service is beneficial because of its personalized nature, according to the witness.

The second witness stated that she has used applicant's sightseeing service a couple of times in the past and found it satisfactory. She has also advised friends about the availability of the tour service originating at the Mall.

The third witness stated he has referred relatives and friends to applicant's service and been told that the tour was excellent. Many of those referred are picked up at various points in the District of Columbia or at the Mall. The trips include stops at the sights in Washington, D. C. as well as Mount Vernon.

In Case No. AP-83-26, the first witness, a parking attendant at the lot near 14th Street and Pennsylvania Avenue, N. W., where many of applicant's passengers park their cars, stated that many people ask about the availability of sightseeing tours and he often recommends applicant's service.

The second witness, a retired government worker, testified that he has known applicant for many years and has had occasion to refer relatives to the service who have expressed satisfaction with the sightseeing tours.

In Case No. AP-83-28, one public witness testified at the hearing. She stated that she used applicant's service for a family sightseeing tour and was satisfied. The tour encompassed traditional sightseeing spots in the Mall area and Arlington Cemetery, as well as areas of particular interest to black people, including the Black African Art Museum, Georgetown (including the old cemetery) and the Frederick Douglass House in Anacostia. The witness emphasized that she had tried to find a specific tour geared to black history and culture but was unable to find anything until applicant structured a specific tour. She has used other large tour carriers in the past but generally thought that they were too hurried and impersonal. Later this summer the witness intends to use applicant's service for a family reunion to entertain people from out-of-town. The witness, a school teacher and International State Director of the Drama Association (International Thespian Society), stated that she expects there would be a future need for service for both school children and members of the Drama Association.

DISCUSSION

The Compact, Title II, Article XII, Section 4(b) provides that a certificate of public convenience and necessity shall be issued by the Commission if it finds

that the applicant is fit, willing, and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise, such application shall be denied.

A finding of fitness is a prerequisite under the Compact to a grant of authority, and each applicant has the burden of establishing its fitness properly to perform the proposed service in keeping with the terms and conditions of the applicable statutory and Commission requirements.

Insofar as compliance fitness is concerned, the Commission does not believe that the prior operations rendered by any of the applicants, in light of the circumstances involved herein, warrant the conclusion that applicants will not, in the future, comply with pertinent regulatory requirements. There is some question as to the accuracy of advice which may have been given these applicants at the sources of the other licensing they require. It appears that many of the applicants relied upon inaccurate information provided by apparently authoritative sources. While there is also some question as to how far each carrier should reasonably have trusted such advice to the exclusion of independent inquiry and investigation, the Commission, in its discretion, will confer the benefit of the doubt on the carriers. The carriers ceased operations and filed appropriate applications expeditiously after being informed in late April 1983 of the necessity so to do, thus supporting the conclusion that applicants do not intend to disregard the provisions of the Compact and our rules, regulations and orders thereunder. In fact, each applicant applied for temporary authority pending resolution of the applications under consideration, further indicating their willingness to comply with applicable regulatory requirements.

Two applicants, Thomas and Scenic were denied temporary authority (in Case Nos. AP-83-16 and AP-83-27 respectively) because of questions regarding their compliance fitness. In Order No. 2419, served May 17, 1983, (Case No. AP-83-16) the Commission found that applicant had been operating continuously in disregard of a cease-and-desist directive in Order No. 1624, served November 17, 1976. At the public hearing held in Case No. AP-83-17, applicant testified that communication with personnel of the District of Columbia Public Service Commission (and a subsequent written letter) essentially stated that he could operate under the authority of that agency. That, together with observation of other uncertificated operators, convinced applicant that his operations were not illegal.

In Order No. 2431, served June 7, 1983, (Case No. AP-83-27) the Commission found that one of the partners of applicant was formerly a principal stockholder and operator of a certificated carrier conducting special operations similar to that engaged in by applicant. Thus, the partner's awareness of the need for certification evidenced an unwillingness to comply with Commission requirements when operations were more recently instituted in applicant's partnership form. At the public hearing held in Case No. AP-83-28, the involved partner stated that he was unaware that sightseeing operations conducted solely in the Mall area (as opposed to pickup at hotels and other facilities) required certification. These applicants, as well as all others herein, are advised of the necessity fully to familiarize themselves with the requirements of the law relating to the transportation for hire of passengers and to avoid violations which, in the future, will be considered more harshly.

The evidence shows that applicants are financially able to provide the proposed transportation. Each of the applicants has sufficiently demonstrated the ability to provide the proposed transportation in a reasonably efficient, expeditious and safe manner. From the financial data submitted, it appears that their operations are financially viable, and that their vehicles are suitable for the transportation.

The Commission must also consider whether the subject transportation is required by the public convenience and necessity, as required by Title II, Article XII, Section 4(b) of the Compact, supra.

Based on the evidence elicited at the various public hearings held in these proceedings, both individually and considered collectively, the public has a need for the type of service proposed herein. While there are certificated carriers providing structured sightseeing tours, none appeared in opposition to these applications. There appears to be a need for a more informal tour service in the Mall area. In addition, as pointed out by a number of witnesses, restaurant customers, out-of-town persons parking downtown, and other tourists in the downtown Washington, D. C., area are interested in a tour service arranged on short notice in the immediate area rather than at hotel and motel sites. Furthermore, the long duration of several applicants' operations, coupled with the lack of opposition to these cases, indicates that the grants of authority made herein will not have a material adverse effect on existing carriers.

The witnesses have been laudatory about the services provided by applicants, and it is clear that applicants are experienced in providing sightseeing tours. The ability to tailor service to the specific demands of a small group and to offer a more intimate tour appeals to a number of the witnesses, who also characterized the larger tour operations as more structured and impersonal. Most of the witnesses mentioned the positive feedback they received from people they referred to the various applicants.

In Case No. AP-83-10 evidence was presented regarding the need for transportation to Georgetown Day School, Washington, D. C., from points in Montgomery County, Md., and the District of Columbia. The lack of available public transportation and the satisfactory service presented in the past support issuance of authority for this service.

In Case No. AP-83-22 evidence was adduced indicating a need for sightseeing service originating and ending at the Veterans Administration, the Bible Way Church, the Gramercy Hotel and the Normandy Inn, all points in the District of Columbia. In Case No. AP-83-28 a detailed need for service to various points throughout

Washington, D. C. was addressed by the public witness. Based on the testimony presented in these two hearings an expanded grant of authority will be issued therein. In several other instances witnesses mentioned prior pickup service at other locales, but did not specify a general need for this type of service or otherwise indicate that their transportation needs could not be accommodated by pickup service in the Mall area.

Several of the applicants specified that their requests for authority were limited to transportation to be provided in vehicles with a designed seating capacity of 15 passengers or less. In those instances where the restrictive amendment was not part of the application, evidence presented at the respective public hearings indicated that the type of equipment now used, as well as the size of equipment contemplated to be used in the future, generally fits this same category. As a result of this, as well as a restrictive amendment agreed to in Case No. AP-83-08 limiting the size of equipment to be used, the Commission will impose a size limitation in all grants of authority in conformance with the evidence presented. Because no need was established for the transportation of mail, express and baggage in the same vehicle with passengers (other than property remaining in the passengers' possession), that authority will be denied to those applicants requesting it. A restriction will be imposed against the solicitation of passengers in the territory specified below in accordance with D. C. Police Regulations (January 1983), Article II, Section 8(e)(7).

THEREFORE, IT IS ORDERED:

1. That the applicants in Case Nos. AP-83-12, AP-83-13, AP-83-17, and AP-83-26 are hereby granted authority to transport passengers to the following extent:

Special operations, restricted to lectured, round-trip sightseeing tours, between Mount Vernon and Arlington National Cemetery, Va., and points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N. W., and Rock Creek Parkway, N. W., thence along Constitution Avenue, N. W., to 17th Street, N. W., thence along 17th Street, N. W. to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to 10th Street, N. W., thence along 10th Street, N. W., to F Street, N. W., thence along F Street, N. W., to 9th Street, N. W., thence along 9th Street, N. W., to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to Constitution Avenue, N. W., thence along Constitution Avenue to its junction with 2nd Street, N. E.

RESTRICTED to the transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver); and

FURTHER RESTRICTED against the solicitation of passengers on any public space south of a line beginning at the junction of the east side of East Executive Avenue and the center line of Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., and a line extending along the northern boundary of the White House and the Executive Office Building to the west side of 17th Street, N. W.

2. That in Case No. AP-83-08, Richard W. Butler is hereby granted authority to transport passengers as follows:

Special operations, restricted to lectured, round-trip sightseeing tours, between points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N. W., and Rock Creek Parkway, N. W., thence along Constitution Avenue, N. W., to 17th Street, N. W., thence along 17th Street, N. W. to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to 10th Street, N. W., thence along 10th Street, N. W., to F Street, N. W., thence along F Street, N. W., to 9th Street, N. W., thence along 9th Street, N. W., to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to Constitution Avenue, N. W., thence along Constitution Avenue to its junction with 2nd Street, N. E.

RESTRICTED to the transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver); and

FURTHER RESTRICTED against the solicitation of passengers on any public space south of a line beginning at the junction of the east side of East Executive Avenue and the center line of Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., and a line extending along the northern boundary of the White House and the Executive Office Building to the west side of 17th Street, N. W.

3. That in Case No. AP-83-10, V.I.P. Tours is hereby granted authority to transport passengers as follows:

- (a) Special operations, transporting school children between the Georgetown Day School, Washington, D. C., on the one hand, and, on the other, points in the District of Columbia and Montgomery County, Md.; and
- (b) Special operations, restricted to lectured, round-trip sightseeing tours, between Mount Vernon and Arlington National Cemetery, Va., and points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N. W., and Rock Creek Parkway, N. W., thence along Constitution Avenue, N. W., to 17th Street, N. W., thence along 17th Street, N. W. to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to 10th Street, N. W., thence along 10th Street, N. W., to F Street, N. W., thence along F Street, N. W., to 9th Street, N. W., thence along 9th Street, N. W., to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to Constitution Avenue, N. W., thence along Constitution Avenue to its junction with 2nd Street, N. E.

RESTRICTED in (a) and (b) above to transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver); and

FURTHER RESTRICTED against the solicitation of passengers on any public space south of a line beginning at the junction of the east side of East Executive Avenue and the center line of Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., and a line extending along the northern boundary of the White House and the Executive Office Building to the west side of 17th Street, N. W.

4. That in Case No. AP-83-22, Samuel Howell trading as Howell Sightseeing Tours is hereby granted authority to transport passengers as follows:

Special operations, restricted to lectured, round-trip sightseeing tours, between Mount Vernon and Arlington National Cemetery, Va., the Veterans Administration, the Bible Way Church, the Gramercy Hotel, and the Normandy Inn, and points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N. W., and Rock Creek Parkway, N. W., thence along Constitution Avenue, N. W., to 17th Street, N. W., thence along 17th Street, N. W. to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to 10th Street, N. W., thence along 10th Street, N. W., to F Street, N. W., thence along F Street, N. W., to 9th Street, N. W., thence along 9th Street, N. W., to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to Constitution Avenue, N. W., thence along Constitution Avenue to its junction with 2nd Street, N. E.

RESTRICTED to the transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver); and

FURTHER RESTRICTED against the solicitation of passengers on any public space south of a line beginning at the junction of the east side of East Executive Avenue and the center line of Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., and a line extending along the northern boundary of the White House and the Executive Office Building to the west side of 17th Street, N. W.

5. That in Case No. AP-83-23, James Warren Dickens is hereby granted authority to transport passengers, as follows:

Special operations, restricted to lectured, round-trip sightseeing tours, between Mount Vernon and Arlington National Cemetery, Va., and points in that part of the District of Columbia south of a line beginning at the junction of Constitution

Avenue, N. W., and Rock Creek Parkway, N. W., thence along Constitution Avenue, N. W., to 17th Street, N. W., thence along 17th Street, N. W. to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to 10th Street, N. W., thence along 10th Street, N. W., to F Street, N. W., thence along F Street, N. W., to 9th Street, N. W., thence along 9th Street, N. W., to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to Constitution Avenue, N. W., thence along Constitution Avenue to its junction with 2nd Street, N. E.

RESTRICTED to the transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver); and

FURTHER RESTRICTED against the solicitation of passengers on any public space south of a line beginning at the junction of the east side of East Executive Avenue and the center line of Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., and a line extending along the northern boundary of the White House and the Executive Office Building to the west side of 17th Street, N. W.

6. That in Case No. AP-83-28, Scenic Sightseeing Tours is hereby granted authority to transport passengers, as follows:

Special operations, restricted to lectured, round-trip sightseeing tours, from points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N. W., and Rock Creek Parkway, N. W., thence along Constitution Avenue, N. W., to 17th Street, N. W., thence along 17th Street, N. W. to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to 10th Street, N. W., thence along 10th Street, N. W., to F Street, N. W., thence along F Street, N. W., to 9th Street, N. W., thence along 9th Street, N. W., to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to Constitution Avenue, N. W., thence along Constitution Avenue to its junction with 2nd Street, N. E., to Mount Vernon and Arlington National Cemetery, Va., and points in the District of Columbia, and return.

RESTRICTED to the transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver); and

FURTHER RESTRICTED against the solicitation of passengers on any public space south of a line beginning at the junction of the east side of East Executive Avenue and the center line of Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., and a line extending along the northern boundary of the White House and the Executive Office Building to the west side of 17th Street, N. W.

7. That the applications enumerated in paragraphs one through six above, except to the extent granted herein, are hereby denied.

8. That applicant in Case No. AP-83-23 is hereby directed to file a certificate of insurance as required by Commission Regulation No. 62.

9. That each of the applicants herein is hereby directed to file an affidavit of compliance with Commission Regulation No. 68 governing identification of motor vehicles, for which purpose the following carrier numbers are assigned:


Case No. AP-83-08 -- WMATC No. 84
Case No. AP-83-10 -- WMATC No. 85
Case No. AP-83-12 -- WMATC No. 86
Case No. AP-83-13 -- WMATC No. 87
Case No. AP-83-17 -- WMATC No. 88
Case No. AP-83-22 -- WMATC No. 89
Case No. AP-83-23 -- WMATC No. 90
Case No. AP-83-26 -- WMATC No. 91
Case No. AP-83-28 -- WMATC No. 92

10. That each of the applicants herein is hereby directed to file two copies of its WMATC Tariff No. 1 as required by Commission Regulation No. 55, such tariff to be effective upon acceptance by the Commission.

11. That upon timely compliance by each applicant with the directive set forth above including the filing and approval by the Commission of a tariff as required in paragraph 10 above, an appropriate Certificate of Public Convenience and Necessity will be issued.

12. That, in each application, unless compliance with the provisions of the preceding paragraph is effected within 30 days from the date of service hereof or such additional time as the Commission may authorize, the grant of authority made herein to any non-complying applicant shall be void and the application shall stand denied in its entirety effective upon expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER AND SHANNON:



WILLIAM H. MCGILVERY
Executive Director